

16 JAN 2003



UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, D.C. 20231
www.uspto.gov

Richard L. Mayer
KENYON & KENYON
One Broadway
New York, New York 10004

In re Application of	:	
OHMS, Franz	:	
Application No.: 09/623,342	:	DECISION ON PETITION
PCT No.: PCT/DE98/03741	:	
Int. Filing Date: 21 December 1998	:	
Priority Date: 05 March 1998	:	
Attorney Docket No.: 10191/1577	:	
For: SWITCHING CONTROLLER	:	

This decision is in response to the "Renewed Submission under 37 CFR 1.42" and "Petition to Revive under 37 CFR 1.137(b)" filed 16 December 2002.

BACKGROUND

On 21 December 1998, applicant filed international application no. PCT/DE98/03741 which claimed a priority date of 05 March 1998 and designated the United States. On 28 September 1999, a Demand was filed with the International Preliminary Examining Authority electing the United States. The election was made prior to the expiration of nineteen months from the priority date. As a result, the deadline for payment of the basic national fee was extended to expire on 05 September 2000.

On 31 August 2000, applicant filed a transmittal letter for entry into the national stage in the United States accompanied, inter alia, by: the basic national fee and an international search report.

On 22 September 2000, the United States Designated/Elected Office mailed a Notification of Missing Requirements under 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating that an oath or declaration in compliance with 37 CFR 1.497(a) and (b) must be filed. The notification set a one-month time limit in which to respond.

On 22 March 2001, applicant filed "Response to Missing Requirements under 35 U.S.C. 371" which was accompanied by, among other items: a declaration and power of attorney executed by Gabriele Ohms on behalf of deceased inventor, Franz Ohms and a translation of the international application.

In a decision dated 16 July 2001, applicant's request filed 22 March 2001 was dismissed because the declaration was defective under 37 CFR 497(b)(2).

On 16 February 2002, the above identified application was abandoned for failure to file a complete response to the "Decision on Papers under 37 CFR 1.42" mailed 16 July 2001 within the time period set therein.

On 16 December 2002, applicant filed the present petition under 37 CFR 1.42 and 37 CFR 1.137(b).

DISCUSSION

A. Renewed Petition under 37 CFR 1.42

37 CFR 1.42 *When the Inventor is Dead*, states, in part:

In case of the death of the inventor, the legal representative (executor, administrator, etc.) of the deceased inventor may make the necessary oath or declaration, and apply for and obtain the patent.

The declaration filed 16 December 2002 is executed by Gabriele Ohms as the "sole heir" of the deceased inventor. The declaration is acceptable under 37 CFR 1.42 and complies with 37 CFR 1.497(a)-(b).

B. Petition under 37 CFR 1.137(b)

A petition under 37 CFR 1.137(b) requesting that the application be revived on the grounds of unintentional abandonment must be accompanied by (1) the required reply, (2) the petition fee required by law, (3) a statement that the "entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional," and (4) any terminal disclaimer and fee required pursuant to 37 CFR 1.137(c).

With regard to Item (1), the proper response was the declaration in compliance with 37 CFR 1.42 filed on 16 December 2002.

As to Item (2), the appropriate petition fee of \$1280.00 as required by 37 CFR 1.17(m) was submitted.

With regard to Item (3), applicant's statement that "the entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional" satisfies the requirement of 37 CFR 1.137(b)(3).

As to Item (4), the terminal disclaimer is not required since this application was filed after 08 June 1995.

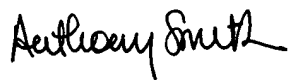
CONCLUSION

The papers filed under 37 CFR 1.42 are **ACCEPTED**.

The petition to revive under 37 CFR 1.137(b) is **GRANTED**.

The application has an international filing date of 21 December 1998, under 35 U.S.C. 363, and a 35 U.S.C. 371(c) date of **16 December 2002**.

This application is being forwarded to the National Stage Processing Branch of the International Division for continued national stage processing.



Anthony Smith
Attorney Advisor
Office of PCT Legal Administration
Tel: (703) 308-6314
Fax: (703) 308-6459